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**COUNSEL FOR JAMES S. GRADY**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**IN RE:**

**SAMUEL J. IACULLO,**  
  
**Debtor.**

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**CASE NO. 13-51001  
CHAPTER 7**

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**JAMES S. GRADY,**

**Plaintiff,**

**v.**

**SAMUEL J. IACULLO,**

**Defendant.**

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**ADVERSARY CASE NO. 13-05056**

**PLAINTIFF'S MOTION TO DISMISS ADVERSARY PROCEEDING**

James S. Grady ("Mr. Grady") files this *Motion to Dismiss Adversary Proceeding* (this "Motion"), and in support thereof respectfully states as follows.

**I.  
BACKGROUND**

1. Mr. Grady is the registered owner of the copyrights of a collective group of photographs and videos from the Colorado-based web publication TrueTeenBabes™ (the "Works").

2. In 2012, the Debtor used various internet screen-names and other fake identities to distribute thousands of the Works without Mr. Grady's permission, thereby infringing on Mr. Grady's copyrights and directly causing a massive number of downstream infringements.

3. On or about July 3, 2012, Mr. Grady sent the Debtor a cease and desist letter via certified mail, return receipt requested. In the cease and desist letter, Mr. Grady demanded that the Debtor immediately remove his postings of the Works from various websites and cease his infringement on Mr. Grady's copyrights. The Debtor neither responded to the cease and desist letter nor removed his postings of the Works.

4. Because the Debtor continued to infringe on Mr. Grady's copyrights notwithstanding the cease and desist letter, on March 8, 2013, Mr. Grady filed a lawsuit against the Debtor seeking damages from and injunctive relief against the Debtor relating to the Debtor's repeated violations of federal copyright and trademark law in the United States District Court for the District of Colorado (the "District Court Action").

5. The Debtor was served with process on March 30, 2013. According to Federal Rule of Civil Procedure 12(a)(1)(A)(i), the Debtor was required to file an answer on or before April 22, 2013.

6. The Debtor did not file an answer in the lawsuit. Rather, on April 17, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code"), initiating the bankruptcy case (the "Bankruptcy Case").

7. On July 22, 2013, Mr. Grady filed his *Original Complaint Objecting to Dischargeability*, commencing the above-styled adversary proceeding (the "Adversary

Proceeding”). In the Adversary Proceeding, Mr. Grady alleged that the Debtor willfully and maliciously infringed upon his copyrights.

8. On September 18, 2013, Mr. Grady filed *Plaintiff’s Motion to Stay or Abate Adversary Proceeding* seeking an order staying or abating the Adversary Proceeding until the conclusion of the judicial proceedings in the District Court Action. The *Order Granting Plaintiff’s Motion to Stay or Abate Adversary Proceeding* was entered on October 9, 2013.

9. A final judgement in favor of Mr. Grady in the amount of \$251,000 (the “Judgment”) was entered in the District Court Action. However, the Judgment did not include certain findings that would assist Mr. Grady in further prosecuting this Adversary Proceeding, and Mr. Grady does not wish to incur further fees and costs to pursue this action. Accordingly, Mr. Grady requests that the Court dismiss the Adversary Proceeding,

## **II.** **RELIEF REQUESTED**

10. By this Motion, Mr. Grady respectfully requests that the Court enter an order dismissing the Adversary Proceeding.

## **III.** **PRAYER**

WHEREFORE, BASED UPON THE FOREGOING, Mr. Grady respectfully requests that the Court enter an order: (i) granting the Motion; (ii) dismissing this Adversary Proceeding; and (iii) granting Mr. Grady such relief to which he is otherwise entitled.

DATED: April 18, 2018.

Respectfully submitted,

**HAYWARD & ASSOCIATES PLLC**

By: /s/ Melissa S. Hayward  
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**ATTORNEYS FOR JAMES S. GRADY**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was served upon the parties appearing on the attached service list by electronic filing, e-mail, or first class United States mail, postage prepaid on April 18, 2018.

/s/ Melissa S. Hayward  
Melissa S. Hayward